

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K05-S-26**

**CHARLES A. BROWN, JR
NORMAN V. NOLTEMEYER**

APPELLANTS

V.

ORDER NO. K-19504

**JEFFERSON COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals has delegated authority to the hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on December 8, 2005 in Louisville, Kentucky and makes the following findings of fact, conclusions of law and recommended disposition.

FINDINGS OF FACT

This assessment appeal is for real property located at 2908 Rio Rita Avenue, Louisville in Jefferson County. The Jefferson County Property Valuation Administrator assessed the property at \$116,460.00. The taxpayer or Appellant values the property at \$33,390.00. The Jefferson County Board of Assessment Appeals valued the property at \$116,460.00. The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

The Appellant offered the following evidence in support of Appellant's appeal:

Ms. Norma Lennox of 3502 Manor Terrace testified as a 21-year manager of the subject property, known as the Bon Air Apartments. Ms. Lennox describes the property as a duplex unit related to other apartment building complexes totaling 70 units. The subject property involves a two bedrooms, two bath apartments with a metal staircase, no balconies or covered parking. Ms. Lennox describes the property being adjacent to Farnsley Park maintained by the Metropolitan Park system. Additionally, Ms. Lennox mentions her involvement to address crime in the park and maintains the current situation is a problem toward stability in her leasing the units and improving the cost of leasing in the duplex. According to Ms. Lennox's testimony, leasing her duplex is complicated by "section 8" housing nearby which has lower rents. She testified the rent of a unit in the duplex to be \$430.00 monthly. She noted the previous rent hike occurred in 2001 at \$410.00 monthly.

Mr. Charles A. Brown, Jr. testified as an owner of the entire complex and as the original builder to the subject duplex "about thirty years ago". He is a certified appraiser and a member of the real estate board, and his experience allows him to serve as "an expert" with no objection from the Appellee. Mr. Brown did not present an actual appraisal of the subject property, but gave testimony based on his experience as an appraiser and being the actual owner.

Mr. Brown notes real estate evaluation can be viewed through three types of approaches: "the income approach, the cost approach, and the market date or market comparison or sales approach". Mr. Brown notes there "is a demand for a duplex" and a 4 plex, but his property has been defined as part of a 70 unit property and operated in this manner for 30 years. Therefore, Mr. Brown feels the "the income approach" is the better way to appraise the property. Additionally, he discusses the changes in the subject property's area and its consequences for investors. Mr. Brown discussed various cap rates along with the subject property having "no

amenities” and the importance of keeping a low vacancy rate.

The Appellee called Donna Hunt to give her testimony as the chief deputy with the Jefferson County Property Valuation Assessment Office. Ms. Hunt testified discussing a “gross rent multiplier” for an analysis. She used a market rent figure to establish a figure of at least \$450.00 monthly and looked at seven studies in the geographical area to establish a G.R.M. (gross rent multiplier).

The comparables were on two different locations on Orchard Manor Circle, two on Six Mile Lane, one on Goldsmith Lane, one on Steier Lane and one on Noe Way. Using the G.R.M., Ms. Hunt introduced a figure of 115 which reflects the lower end of the sales range between 112 to 135. Ms. Hunt spoke about the demand for small duplexes. She also presented multi-listing sales containing figures for rent. Her analysis finds a market rent for the duplex totaling \$990.00 monthly.

Mr. Robert Ackerson, representing the Appellant as counsel, noted all of the comparisons are 4 plex buildings, not a duplex similar to the subject property. Ms. Hunt noted the comparisons involve 4 plexes and do not include duplexes. Additionally, the 4 plexes involve different amenities such as garages. Ms. Hunt gave testimony to her list of degrees as a licensed appraiser and being a broker since 1981.

Mr. John Worland, representing the Jefferson County PVA office provided testimony. He noted the assessed appreciation with the comparable properties having carports, garages, different lot sizes, and square footage. Mr. Worland noted the positive amenity of the subject property being adjacent to a park.

It is the finding of this hearing the Appellant partially sustained his burden of proof regarding his challenge to the final order of the Jefferson County Board of Assessment Appeals.

However, a gross rent multiple system is a valid and appropriate formula to be used as an appraisal tool. The current rent for a single unit in the duplex (\$430.00) is to be factored with the low-end multiple factor of 115 proposed by the Appellee.

Based upon the evidence in the record, it is the finding of this hearing officer, Bill Beam, Jr. the fair cash value of the property in question as of January 1, 2005 is \$98,900.00.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Jefferson County Board of Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Jefferson County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash

value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Jefferson County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the evidence in the record, it is the finding of the hearing officer, Bill Beam, Jr. the fair cash value of the property in question as of January 1, 2005 is \$98,900.00.

RECOMMENDED ORDER

It is recommended that the July 26, 2005 final ruling of the Jefferson County Board of Assessment Appeals be overturned and the real property located at 2908 Rio Rita Avenue, be assessed at a fair cash value of \$98,900.00 as of January 1, 2005.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

FINAL ORDER

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officer, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing

constitutes a failure to exhaust administrative remedies and precludes appellate review.

Swatzell v. Natural Resources and Environmental Protection Cabinet, Ky App 962 SW 2d 866 (1998).

The July 26, 2005 final ruling of the Jefferson County Board of Assessment Appeals is reversed and the real property is to be assessed at a fair cash value of \$98,900.00 as of January 1, 2005.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

DATE OF ORDER
AND MAILING: April 27, 2006

KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING

NANCY MITCHELL
CHAIR
